SUPREME COURT, U. S.
No. 132
FILED
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In the Supreme Court of the United States

OCTOBER TERM, 1966

YUEN KAM CHUEN and NG SUI SANG, PETITIONERS

v.

P. A. ESPERDY, AS DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE FOR THE DISTRICT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The *per curiam* opinion of the court of appeals (Pet. App. 12-13) is not yet reported. The opinion of the district court (Pet. App. 14-16) is reported at 279 F. Supp. 151.

JURISDICTION

The judgment of the court of appeals was entered on May 8, 1968. The petition for a writ of certiorari

was filed on May 27, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, upon revocation of the parole of alien crewmen, the Attorney General may deport them by commercial aircraft to the country of their last residence.

STATUTES INVOLVED

The Immigration and Nationality Act, Section 212 (d)(5), 8 U.S.C. 1182(d)(5), provides as follows:

> The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

Section 254 of the Immigration and Nationality Act, 8 U.S.C. 1284, provides in pertinent part:

> (a) *Penalties for failure.*
>
> The owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States from any

place outside thereof who fails (1) to detain on board the vessel, or in the case of an aircraft to detain at a place specified by an immigration officer at the expense of the airline any alien crewman employed thereon until an immigration officer has completely inspected such alien crewman, including a physical examination by the medical examiner, or (2) to detain any alien crewman on board the vessel, or in the case of an aircraft at a place specified by an immigration officer at the expense of the airline, after such inspection unless a conditional permit to land temporarily has been granted such alien crewman under section 1282 of this title or unless an alien crewman has been permitted to land temporarily under section 1182(d)(5) or 1283 of this title for medical or hospital treatment, or (3) to deport such alien crewman if required to do so by an immigration officer, whether such deportation requirement is imposed before or after the crewman is permitted to land temporarily under sections 1182(d)(5), 1282, or 1283 of this title, shall pay to the collector of customs of the customs district in which the port of arrival is located or in which the failure to comply with the orders of the officer occurs the sum of $1,000 for each alien crewman in respect to whom any such failure occurs. No such vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs. The Attorney General may, upon applica-

tion in writing therefor, mitigate such penalty to not less than $200 for each alien crewman in respect of whom such failure occurs, upon such terms as he shall think proper.

* * * *

(c) *Deportation on other than arriving vessel or aircraft; expenses.*

If the Attorney General finds that deportation of an alien crewman under this section on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be deported from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable. All expenses incurred in connection with such deportation, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safeguards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such expenses have been paid or their payment guaranteed to the satisfaction of the Attorney General. An alien crewman who is transferred within the United States in accordance with this subsection shall not be regarded as having been landed in the United States.

STATEMENT

Petitioners are citizens of the Republic of China and residents of the Crown Colony of Hong Kong.

They arrived on foreign vessels at the Port of New York on December 20, 1962, and June 30, 1962, respectively (R. 2). They were denied shore leave because they lacked passports or other valid travel documents, but were paroled into this country for the period their vessels were in the United States, not to exceed 29 days. Both "jumped ship", were later apprehended, but were again paroled pending arrangement for departure (R. 16-19).

Subsequent efforts to deport them on the vessels which brought them to this country were thwarted by the institution of declaratory judgment actions claiming that deportation without a hearing would deny them due process. Their contentions were rejected in *Wong Hing Fun et al.* v. *Esperdy*, 335 F.2d 656 (C.A. 2), certiorari denied *sub nom. Ng Sui Sang* v. *Esperdy*, 379 U.S. 970 (R. 20-21).

Both petitioners thereafter applied for stays of deportation, claiming that they were political refugees from the mainland of China. After their requests were denied, they brought declaratory judgment actions that were to be governed by the determination of another action in which it was subsequently held that relief is unavailable on such a ground. *Tai Mui et al.* v. *Esperdy*, 371 F.2d 772 (C.A. 2), certiorari denied, 386 U.S. 1017 (R. 21-22).

After air transportation to Hong Kong was arranged, petitioners brought the present declaratory judgment action in the United States District Court for the Southern District of New York on November 16, 1967, to restrain the District Director from deporting them to Hong Kong by commercial airline,

pursuant to agreement with the lines which brought them to this country. Relief was sought on the grounds that such method of deportation is not provided for by statute and that they should not be sent to Hong Kong. Petitioner Yuen Kam Chuen alleged "[u]pon information and belief" that he had joined the ship upon which he came to this country in London, England (R. 2). Petitioner Ng Sui Sang alleged, also upon information and belief, that he joined his ship in Japan (R. 3). Respondent stated by affidavit, based upon records of the Immigration and Naturalization Service, that both petitioners carried Seamen's Identity Books, issued in Hong Kong, which showed their residence as being in that colony; that the Identity Book of the first petitioner indicated that he was flown from Hong Kong to join his vessel in London; that the Identity Book of the second petitioner indicated that he shipped out from Hong Kong on one vessel, but was discharged from that ship and on the same day joined the ship that brought him to this country (R. 19-23). The affidavit further stated that the Attorney General, through his delegate, had determined that it was impractical to deport petitioners by placing them aboard the vessels which brought them to this country because of uncertainties as to the arrival and departure of shipping, and difficulties as to notice of surrender; that the transportation lines had acknowledged the problem and authorized air travel at their expense (R. 23-24). Re-entry visas to Hong Kong have been arranged (R. 21).

The district court sustained respondent's motion for summary judgment (R. 54-58). The court of appeals

affirmed in open court, "essentially for the reasons given" by the court below (R. 65-66; Pet. App. 13).

ARGUMENT

Petitioners urge that the government cannot deport them without using the lines which brought them to this country and that they cannot be deported to Hong Kong. Neither contention is sound.

Section 254(a) (*supra*, pp. 2-3) of the Immigration and Nationality Act makes the transportation line responsible for expenses incurred by reason of the desertion of its crewmen. A fine of $1,000 is imposed, subject to mitigation at the discretion of the Attorney General. The statute demands also that the line accept the crewman back on board the same vessel and deport him, if practicable, on that vessel or on another of its own vessels. I Gordon and Rosenfield, *Immigration Law and Procedure*, § 6.3a at 6-23 (rev. ed. 1966). As the trial judge pointed out, the companies might challenge the finding of the Attorney General that it was not practicable to use their facilities in such deportation, but in this case the lines have acquiesced in the arrangement. Petitioners have no standing to object. In the eyes of the law, they are still at the boundary line, with no foothold in the country. Section 212(d)(5), Immigration and Nationality Act, 8 U.S.C. 1182(d)(5); *Kaplan* v. *Tod*, 267 U.S. 228; *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 215. The purpose of the statute was to provide a summary and effective method of returning deserting crewmen, not to vest any right in such individuals as to the means or style by which

they were to be ushered out of the country. S. Rep. No. 1515, 81st Cong., 2d Sess., pp. 550, 554-558; *United States ex rel. Kordic* v. *Esperdy*, 386 F.2d 232, 234 (C.A. 2), pending on petition for a writ of certiorari, No. 1283 Misc., this Term.

Since Section 254(c), *supra*, p. 4, expressly recognizes that the Attorney General may find it impracticable to deport an alien crewman either on the ship on which he arrived or on another vessel of the same line, the statute necessarily contemplates that alternative arrangements may be made. Petitioners, who were admitted for 29 days, have delayed their departure from the United States for more than five years since their concededly illegal presence began. Further delay is clearly not warranted.

No need exists for a "hearing to determine the true facts with reference to the background of petitioners * * * to determine the proper countries to which they should be sent" (Pet. 9). The true facts are already on the record. Petitioners' identity papers show that they are residents of the Crown Colony of Hong Kong, whose authorities are agreeable to receiving them on deportation. Obviously the fleeting connection with England or Japan, where petitioners joined the ships bringing them to this country, provides no basis for those countries to assume the responsibility for receiving them. Petitioners' previously asserted claim to be allowed to remain here in the status of political refugees from mainland China precludes any present insistence that they have some special relationship with the Republic of China on Taiwan and should be returned to that country or not deported at all.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1968.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 309868 824